



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
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OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

**MEMORANDUM**

SUBJECT: Environmental Justice News for the Week Ending July 6, 2003

FROM: Nicholas Targ, Counsel  
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This summarizes environmental justice related news for June 30, 2003, through the week ending July 6, 2003. Except as noted, this review is confined to Lexis/Nexis queries conducted under the following search: "(environment! w/2 (justice or racism or equity or disproportionate or disparate)) or (environment! w/50 minorit! or low\*\*\*income) or (executive order 12898) or (civil right! w/50 environmental)". Please note that we have not included multiple articles covering the same topic or articles pertaining to international or foreign-based environmental justice issues, unless they have a direct connection to the United States.

For the week ending July 6, 2003, the following news is current:

**A. News—**

1. Al Baker and Randal C. Archibold, "Appeals Court Strikes Down City's Law on Lead Paint," The New York Times, New York, New York (July 2, 2003).

The State of New York's highest court struck down the City of New York's four-year old lead-based paint law, finding that the City Council failed to identify and explain the potential environmental and public health impacts of the law, as required by state law. *[NT NOTES: Item 4. also pertains to NYC lead-based paint law.]*

2. "Environmental Violators," City News Service, Los Angeles, California (June 30, 2003).

The Los Angeles City Attorney's Office filed charges on June 30, 2003, against six Sun Valley wrecking yards for environmental code violations. Among other violations, the defendants were indicted on charges of illegal waste disposal and improper handling of

hazardous materials. “‘For too long, these businesses have put the health and safety of the residents of Sun Valley at risk,’ City Attorney Rocky Delgadillo said. ‘We are committed to ensuring environmental justice for Sun Valley and all communities in Los Angeles.’” Arraignments are set for September 3, the article reports.

3. John M. Moran, “DEP Rejects Restarting Power Plant,” Hartford Courant, Hartford, Connecticut (June 28, 2003).

The article reports that, “the state Department of Environmental Protection rejected a proposal to restart the English Station power plant in New Haven, saying operation of the plant would aggravate pollution problems in the vicinity.” According to the article, DEP Commissioner Arthur J. Rocque issued the final decision, which overruled the recommendation of a DEP hearing officer. The article also states that, “Rocque's decision was applauded by Mark Mitchell, president of the Connecticut Coalition for Environmental Justice, which had opposed the plant's operation.”

4. Marc Parry, “Pushing Lead-Paint Bill; Councilman calls for support on cleanup guidelines,” Newsday, New York, New York (June 23, 2003).

Manhattan City Council representative, Bill Perkins, of Harlem, urged the passage of a long-pending, lead-based paint bill. Among other things, the bill would require lessors of residential property to address lead-based paint dust, in addition to the paint, itself. According to the article, the bill was introduced in March 2002 and received its first hearing on June 23, 2003. Citing disparities in the incidence of elevated blood lead levels, he attributed the cause to "systemic racism" and "benign neglect."

5. John J. Monahan, “Environmental justice bill before Legislature,” Sunday Telegram, Worcester, Massachusetts (June 22, 2003).

The article addresses an environmental justice bill pending in the Massachusetts legislature and efforts to control urban sprawl. Testifying on the bill, the article quotes Secretary of Environmental Affairs Ellen Roy Herzfelder as stating, “environmental justice policies are closely connected to smart growth approaches the governor favors.” Continuing, she is reported as saying, “providing environmental analysis and better environmental protections will give lower-income residents a ‘bigger voice’ in decisions affecting what is built and what is cleaned up in their neighborhoods.”

## **B. Litigation—**

1. *Save Our Valley v. Sound Transit (Central Puget Sound Regional Transit Authority)*, 2003 U.S. App. LEXIS 13835 (9<sup>th</sup> Cir. July, 10, 2003).

The court held that, “The primary question before us is whether that Department of Transportation regulation [under Title VI of the Civil Rights Act of 1964] creates an individual federal right that can be enforced under the Civil Rights Act, 42 U.S.C. § 1983. Because we conclude that the regulation does not create such a right, we affirm the district court's summary judgment.” The three judge panel noted a split in the Circuits; the 3<sup>rd</sup>, 4<sup>th</sup>, and 11<sup>th</sup> Circuits have “found that agency regulations cannot create an individual federal right enforceable through § 1983,” but the 6<sup>th</sup> and District of Columbia Circuits have found that regulations can create such rights. Concluding that regulations cannot create an enforceable federal right, the Ninth Circuit

took special note of “*Alexander v. Sandoval*, 532 U.S. 275, 149 L. Ed. 2d 517, 121 S. Ct. 1511 (2001), and *Gonzaga Univ. v. Doe*, 536 U.S. 273, 153 L. Ed. 2d 309, 122 S. Ct. 2268 (2002)--that are important because they have strengthened the legal foundation underlying the Third, Fourth, and Eleventh Circuits' holdings and eroded the legal foundation under-lying the D.C. and Sixth Circuits' holdings.”

2. *City of Lansing v. Wolverine Pipeline*, 2003 Mich. App. LEXIS 1339 (June 5, 2003).

The Michigan Court of Appeals upheld the decision of the lower court, finding that a state law requiring consent of local governments' before petroleum pipelines may be constructed does not prevent the State from granting permits prior to municipal approval. Rather, municipal permission may be sought following the issuance of the State permit. The court also found that the municipalities failed to raise their “environmental justice” and Equal Protection claims timely.

### C. Legislation—

1. S.B. 1097, “Calfed Bay-Delta Authorization Act,” introduced by Senators Dianne Feinstein (D-CA) and Barbara Boxer (D-CA) on May 21, 2003. [*Note Companion bill HR 2641, June 26, 2003, introduced by Representatives George Miller (D-CA) and Ellen Tauscher (D-CA).*] *Status: Referred to Senate Committee on Energy and Natural Resources on May 21, 2003.*

The accompanying synopsis provides, “A bill to authorize the Secretary of the Interior to implement the Calfed Bay-Delta Program.” Among other provisions, this bill would provide for, “coordination of public outreach and involvement, including tribal, environmental justice, and public advisory activities under the Federal Advisory Committee Act,” and express “the intent of the Congress that the Federal and State agencies should continue to collaborate to develop a comprehensive environmental justice workplan for the Calfed Bay-Delta Program and fulfill the commitment to addressing environmental justice challenges referred to in the Calfed Bay-Delta Program Environmental Justice Workplan dated December 13, 2000.”

2. H.R 2200, “Environmental Justice Act of 2003,” introduced by Representative Mark Udall (D-CO) and Hilda Solis (D-CA), on May 21, 2003. *Status: referred House Committee on Energy and Commerce, May 21, 2003.*

The accompanying digest provides, “Requires Federal agencies to include achieving environmental justice in their missions through identifying and addressing any disproportionately high and adverse human health or environmental effects of their activities on minority and low-income communities. Establishes the Interagency Working Group on Environmental Justice. Directs each Federal agency to develop an agency-wide environmental justice strategy. Establishes the Federal Environmental Justice Advisory Committee. Requires the Administrator of the Environmental Protection Agency to collect and analyze data assessing environmental and human health risks borne by populations identified by race, national origin, or income. Targets for data collection those areas surrounding facilities expected to have a substantial environmental, human health, or environmental effect on surrounding populations. [NT NOTES: This bill is largely based on Executive Order 12898]

3. H. R. 1916, "Diabetes Prevention Access and Care Act." Introduced by Representative Diana Degette (D-CO) on May 1, 2003.

The legislative synopsis provides that this bill is intended "to prevent and cure diabetes and to promote and improve the care of individuals with diabetes for the reduction of health disparities within racial and ethnic minority groups, including the African-American, Hispanic American, Asian American and Pacific Islander, and American Indian and Alaskan Native communities." Among other provisions: § 399O(a)(1)(B)(ii) provides for research into "environmental barriers in accessing transportation to health centers and health care providers;" § 399O(a)(1)(C) provides for "research on environmental factors that may contribute to the increase in type 2 diabetes...;" § 399O(a)(1)(D) provides for "support for new methods to identify environmental triggers and genetic interactions that lead to the development of type 1 and type 2 diabetes in minority newborns with a high genetic susceptibility to the disease."

4. **Enacted** Maryland, HB 970, "A Bill Concerning Commission on Environmental Justice and Sustainable Communities." Introduced by Delegate Clarence Davis (D-45th Dist.) on February 14, 2003. *Status: Passed House of Delegates, April 20, 2003; Passed Senate on April 3, 2003; Signed by Gov. Robert Erlich (R) on May 22, 2003; Effective Date June 1, 2003.*

The accompanying summary provides that, "[this bill e]stablishes the Commission on Environmental Justice and Sustainable Communities; provides for the membership and terms of the Commission; requires the Governor to designate the chairman of the Commission; requires the Commission to submit a specified report on or before a specified date each year."

5. **Enacted** Virginia, Legislation relating to the Dr. Martin Luther King, Jr. Memorial Commission, 2003 Va. ALS 1035; 2003 Va. Acts 1035; 2003 Va. Ch. 1035; 2002 Va. HB 247. Introduced by Flora Davis Crittenden (D-95th Dist.) on January 8, 2003. *Status: Signed by Governor James S. Gilmore (R) on May 1, 2003.*

Among other provisions, the amendments establish the Martin Luther King, Jr. Living History and Public Policy Center, which shall "conduct public forums, conferences, lectures, and research to address contemporary issues and public policies including, but not limited to, disparity in health care, economic development, education, ethics, religion, social and environmental justice..."

6. California, *S.B. 983*, introduced by Sen. Richard Alarcon (Dist. 20-D) on February 21, 2003. *Status: Passed Senate on June 6, 2003; referred to Assembly Committee on Natural Resources, June 5, 2003.*

The accompanying synopsis provides: "Changes the date for the first report from the Working Group on Environmental Justice convened by the Secretary of Environmental Protection to assist the agency in developing an interagency environmental justice strategy." This bill would make largely technical changes to the California Integrated Waste Management Act. *See*

<[http://www.leginfo.ca.gov/cgi-bin/postquery?bill\\_number=sb\\_983&sess=CUR&house=B&author=alarcon](http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=sb_983&sess=CUR&house=B&author=alarcon)>

7. Massachusetts, H.B. 2112, introduced by David B. Sullivan (Dist. 6<sup>th</sup> Bristol-D) on January 1,

2003. [Note companion bill S. 1190 introduced by Jarrett T. Barrios (Dist. Middlesex, Suffolk and Essex-D)] *Status: Hearing before Joint Committee on Natural Resources and Agriculture, June 12, 2003.*

The accompanying synopsis provides: "Relates to the establishment of an environmental justice program by the Secretary of Environmental Affairs." The bill would establish a comprehensive framework for addressing environmental justice, and include specific planning requirements, and methodology for determining the presents of an "environmental justice population." *See* <<http://www.state.ma.us/legis/bills/house/ht02112.htm>>

8. Massachusetts, H.B. 1270, introduced by Marian Walsh (Dist. Suffolk and Norfolk-D) on January 1, 2003. [Note companion bill H.B 1327 introduced by Corry Atkins (Dist. 14<sup>th</sup> Middlesex-D)] *Status: Hearing before Joint Committee on Natural Resources and Agriculture, June 12, 2003.*

The accompanying synopsis provides: "Promotes efficiency and fairness in environment law enforcement." Among other things, this bill would provide an explicit legislative basis for the use of supplemental environmental projects. *See* <<http://www.state.ma.us/legis/bills/st01270.htm>> **[NT Notes: This bill does not reference environmental justice by name. If passed, it would be the ninth state statute explicitly authorizing the use of SEPs.]**

9. New York A.B. 5938, introduced by Representative Richard Brodsky (D-92nd) on March 4<sup>th</sup>. *Status: Referred to Assembly Committee on Environmental Conservation, March 4, 2003; Amended in Committee on Environmental Conservation, June 5, 2003; referred to Assembly Committee on Rules June 10, 2003; Ordered to third reading, June 12, 2003).*

The accompanying synopsis provides, " Makes various provisions regulating the location of environmental facilities to insure equity of treatment for minority communities or economically distressed areas; requires the Department of Environmental Conservation to maintain an index of environmental facilities in such areas; requires environmental impact statements to state whether the siting of a facility will cause or increase a disproportionate burden on such areas." *See* <<http://assembly.state.ny.us/leg/?bn=A05938>>